

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JACK ROBERT COOPER,

Petitioner,

Case No. 1:06-CV-42

v.

HON. ROBERT HOLMES BELL

GARY BERGHUIS,

Respondent.

**ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS**

This matter is before the Court on a Petitioner Jack Robert Cooper's objections (Dkt. No. 30) to the Magistrate Judge's January 28, 2009, Report and Recommendation ("R&R") (Dkt. No. 29) recommending denial of Petitioner's § 2254 petition for writ of habeas corpus.

This Court is required to make a *de novo* review upon the record of those portions of the R&R to which specific objections have been made. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). Although the Magistrate Judge's R&R is reviewed *de novo*, this Court must review the state court proceedings consistent with the standards set forth in 28 U.S.C. § 2254.

Petitioner objects to the Magistrate Judge's finding that "Petitioner does not contend that the shirt was destroyed in bad faith." (R&R 7.) Petitioner contends that contrary to this finding, he does contend that certain potentially exculpatory DNA evidence was destroyed in bad faith, and he further contends that he fairly presented the bad faith issue to the state

courts. In support of this contention Petitioner relies on the following argument from his briefs before the Michigan Court of Appeals and the Michigan Supreme Court:

This Court should find that the intentional destruction of the evidence, **even in the absence of a showing of bad faith**, denied Defendant his right to due process of law.

(Obj. to R&R 2.)

On review this Court finds that Petitioner assumed the absence of bad faith in his arguments before the state courts, and that he accordingly failed to fairly present the issue of bad faith to the state courts. This Court agrees with the Magistrate Judge that because Petitioner did not argue that the evidence was destroyed in bad faith, he has no basis to assert a due process claim under *Illinois v. Fisher*, 540 U.S. 544 (2004), and *Arizona v. Youngblood*, 488 U.S. 51 (1988). Accordingly,

IT IS HEREBY ORDERED that Petitioner's objections to the R&R (Dkt. No. 30) are **DENIED**.

IT IS FURTHER ORDERED that the January 28, 2009, R&R (Dkt. No. 29) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner's petition for writ of habeas corpus (Dkt. No. 1) is **DENIED**.

Dated: March 3, 2009

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE